

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

QBE INSURANCE COMPANY,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.
)
R. C. and MARY STARKS,) 05-0161-BH-C
)
Defendants.)

ORDER

This action is before the Court on a motion to dismiss (Doc. 4) filed by the defendants, R. C. and Mary Starks and on a motion (Doc. 9) filed by the plaintiff, QBE Insurance Company (“QBE”) to consolidate this action with *QBE Insurance Company v. Thomas Norris*, Civil Action No. 04-0067-BH-C. First, upon consideration of the motion to dismiss, QBE’s response in opposition thereto (Doc. 10), and all other pertinent portions of the record, the Court concludes and it is therefore **ORDERED** that the motion to dismiss is due to be and is hereby **DENIED**, for the reasons stated by QBE. Diversity jurisdiction exists inasmuch as Anchor Managing General Agency, Inc., an Alabama corporation which was granted only limited authority to represent QBE in mediation, is not a proper party to this declaratory judgment action or any other action. In addition, the case at bar is not one related to a parallel proceeding in state court involving the same parties and the same insurance coverage issues. Nor would any declaration by this Court concerning the insurance policy at issue be binding on R. C. and Mary Starks unless they are parties to this action. This Court shall, therefore, exercise its discretion to take

jurisdiction of this action and enter an appropriate declaratory judgment on both the duty to defend and duty to indemnify issues, in satisfaction of the purpose underlying the federal Declaratory Judgment Act.

In view of the above, it is **FURTHER ORDERED** that QBE's motion to consolidate this action with the earlier filed Civil Action No. 04-0067-BH-C be and is hereby **GRANTED**. The Clerk is directed to terminate the file in this action and the parties shall henceforth proceed in the earlier filed Civil Action No. 04-0067-BH-C under the style:

QBE Insurance Company v. Thomas Norris, R. C. Starks and Mary Starks, or in its abbreviated form: *QBE Insurance Company v. Thomas Norris, et al.*

Finally, it is **ORDERED** that the Starks defendant file their **ANSWER** to the Complaint **no later than May 4, 2005**.

DONE this 20th day of April, 2005.

s/ W. B. Hand
SENIOR DISTRICT JUDGE